

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

PARIS GARDNER,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 08 C 50006
)	
OFFICER BEN JOHNSON, OFFICER)	
STEVE JOHNSON, and THE CITY)	
OF ROCKFORD, ILLINOIS,)	
)	
Defendants.)	

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL

NOW COME the Defendants, OFFICER BEN JOHNSON, OFFICER STEVE JOHNSON, and the CITY OF ROCKFORD, by and through their attorneys, City of Rockford Department of Law, Patrick W. Hayes, Legal Director, and Angela L. Hammer, Assistant City Attorney, and for their Brief in Opposition to Plaintiff's Motion to Compel states as follows:

1. On June 30, 2008, Plaintiff filed a Motion to Compel Production of Investigation Report.
2. The documents containing the Plaintiff's statement, the Defendant Police Officers' statements, and witness statements were produced to the Plaintiff.
3. The Defendants asserted a self-critical analysis privilege regarding the investigation report.
4. In *Tice v. American Airlines*, the court assumed the existence of the self-critical analysis privilege. *Tice v. American Airlines*, 192 F.R.D. 270 (N.D. Ill. 2000).
5. In *Tice*, the court indicated the self-critical analysis privilege requires the court to determine whether the party asserting the privilege has established that: 1) the information

sought resulted from critical self-analysis undertaken by the party asserting the privilege, 2) the public has a strong interest in preserving the free flow of the type of information sought, 3) the information is of a type whose flow would be curtailed if discovery were allowed and 4) the document was prepared with the expectation that it would be kept confidential and has been kept confidential. *Tice v. American Airlines*, 192 F.R.D. at 273 (N.D. Ill. 2000).

6. In an Opinion dated April 30, 2001, in *DeLuna v. City of Rockford*, 00 C 50040, this Court found that the Rockford Police Department Firearm's Review Board Report satisfied the requirements of the self-critical analysis privilege.

7. The Court found the document was created as part of a review of a handgun discharge and consists of self-critical evaluation of the circumstances of that incident. The Court stated "there is a strong public interest in encouraging candid, internal discussions of these incidents that may lead to more effective training and policies." Order dated April 30, 2001, in *DeLuna v. City of Rockford*, 00 C 50040.

8. The findings by the Office of Professional Standards at the conclusion of the internal investigation were created as part of the review process outlined in the Uniform Peace Officer Disciplinary Act, 50 ILCS 725/1 *et seq.*

9. As in the matter of documents created by the Firearms Review Board, documents created by the Office of Professional Standards as the result of internal investigations involve a strong public interest in encouraging candid, internal discussions.

10. The findings by the Office of Professional Standards would not be subject to discovery because it is not relevant to the subject matter involved nor reasonably calculated to lead to the discovery of admissible evidence. The documents containing the Plaintiff's statement as well as the reports prepared by the Defendant Police Officers and witness statements were

produced to the Plaintiff. The findings by the Office of Professional Standards are not factual in nature.

11. The findings report by the Office of Professional Standards was prepared with the expectation that it would be kept confidential and has been kept confidential.

12. Therefore, the findings report prepared by the Office of Professional Standards satisfies the requirements of the self-critical analysis privilege.

WHEREFORE, the Defendants respectfully request this Court find that the findings report prepared by the Office of Professional Standards satisfies the requirements of the self-critical analysis privilege and deny the Plaintiff's Motion to Compel the Production of the Investigation Results.

Dated: July 28, 2008

City of Rockford Department of Law,

By: /s/ Angela L. Hammer
Assistant City Attorney

City of Rockford Department of Law
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